

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455A.5(6) and 481A.151, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 113, "Restitution for Pollution Causing Injury to Wild Animals," Iowa Administrative Code.

These amendments will redefine the meaning of "AFS," the acronym used for the American Fisheries Society's special publications on fish counting methods and restitution valuation. The amendments will update the rule to state that "Special Publication 30," the current AFS publication regarding fish and freshwater mussel counting methods and restitution valuation, shall be used by the Department. Iowa Code section 455B.151 authorizes the Department to use the AFS to conduct fish kill counts and assess restitution for damages to the state's natural resources and wildlife. The amendments will also revise the fish species to be valued at \$15 per fish unless the AFS publication requires a higher value, in which case the higher value shall be applied.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 23, 2009. Such written materials should be directed to Martin Konrad, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail Martin.Konrad@dnr.iowa.gov. Persons who wish to convey their views orally should contact the Fisheries Bureau at (515)281-6976 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on October 6, 2009, at 2 p.m. in the Fourth Floor (West) Conference Room, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. Participants will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special needs, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code sections 456A.23, 481A.2, and 481A.151. The following amendments are proposed.

ITEM 1. Amend rule **571—113.2(481A)**, definition of "AFS," as follows:

"AFS" means the Special Publication 24, ~~"Investigation and Valuation of Fish Kills,"~~ 30, "Investigation and Monetary Values of Fish and Freshwater Mussel Kills," published by the American Fisheries Society.

ITEM 2. Amend rule **571—113.3(481A)** as follows:

571—113.3(481A) Liability to the state. Persons who cause by water pollution the destruction of or injury to wild animals of the state shall be liable to the state as provided ~~by 2002 Iowa Acts, Senate File 2293, section 58~~ in Iowa Code section 481A.151. These rules establish the methodologies and criteria for evaluating the extent and value of the destruction or injury and establish the methods of compensation. If the person and the department cannot agree to the proper resolution of a particular case, the issues of liability, damage and compensation will be established through contested case proceedings, as provided by 571—Chapter 7.

ITEM 3. Amend paragraph **113.4(2)“c”** as follows:

c. The monetary valuation of fish shall be the replacement values as published in AFS for all fish lost except ~~those fish that are members of the families Ictaluridae (catfish/bullheads), Esocidae (northern pike/muskellunge), Salmonidae (trout), Percichthyidae (white bass/yellow bass/wipers), Centrarchidae (black bass/crappie/sunfish/rock bass/warmouth), and Percidae (yellow perch/walleye/sauger)~~ the following: channel catfish, flathead catfish, blue catfish, northern pike, muskellunge, northern pike/muskellunge hybrid, rainbow trout, brown trout, brook trout, white bass, yellow bass, white bass/striped bass hybrid, largemouth bass, smallmouth bass, spotted bass, crappie, rock bass, bluegill, redear sunfish, warmouth, pumpkinseed, freshwater drum, yellow perch, walleye, sauger and walleye/sauger hybrid. The value of these fish shall be \$15 each, unless AFS establishes a higher value. Notwithstanding the above, the value of each fish classified by the department as an endangered or threatened species shall be \$1,000.